

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CM CAPITAL SERVICES, LLC,

2:10-CV-317 JCM (LRL)

Plaintiff,

V.

STEWART TITLE OF NEVADA, et al.,

Defendants.

ORDER

Presently before the court is third-party defendant Federal Deposit Insurance Corporation’s (“FDIC”) motion for reconsideration of order dated July 29, 2010 (doc. # 26). Plaintiff CM Capital Services, LLC dba Consolidated Mortgage, LLC (“Consolidated”) filed an opposition (doc. #27). FDIC filed a reply (doc. #29).

“Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); *see* Fed. R. Civ. P. 59(e); *see also* Fed. R. Civ. P. 60(b).

22 FDIC asserts that the court committed clear error in its order denying FDIC's motion to
23 consolidate and for withdrawal of the reference (doc. #18), and that the decision therein was
24 manifestly unjust. In the court's order (doc. #25), it stated, “[t]o date, third-party defendant FDIC
25 has not filed a reply.” However, as stated in its present motion, FDIC filed a timely reply with the
26 court on June 28, 2010 (doc. #24). FDIC asserts that due to the fact that the court did not review the
27 reply before making its decision, it is entitled to a reconsideration of the motion.

1 **Consolidation of Cases**

2 Pursuant to Federal Rule of Civil Procedure 42(a), “[w]hen actions involving a common
 3 question of law or fact are pending before the court, it may order a joint hearing or trial of any or all
 4 matters in issue in the actions; it may order all actions consolidated; and it may take such orders
 5 concerning proceedings herein as may tend to avoid unnecessary costs or delay.” In *In re First*
 6 *Alliance Mort. Co.*, 471 F.3d 977, 987 (9th Cir. 2006), the court found it appropriate to consolidate
 7 matters pending in bankruptcy court with a case pending in the district court when it noted that “two
 8 separate but largely overlapping actions...were consolidated by the district court...a tort action...and
 9 a bankruptcy action.”

10 The action before this court arises out of Stewart Title’s alleged failure to record a valid
 11 partial reconveyance document which would have released FDIC’s lien on building six and ensured
 12 Consolidated a first position on building six. Stewart Title filed a third-party complaint against FDIC
 13 for equitable indemnity involving the same documents. Previously in bankruptcy court, Consolidated
 14 had filed cross-claims against FDIC asserting that it holds a first position lien on building six, and
 15 asked the court to determine the legal effect of the same partial reconveyance document (Adversary
 16 Proceeding No. 09-01114). FDIC asserts that the factual allegations against it in the case before this
 17 court mirror those asserted in the cross-claims in bankruptcy court. Further, FDIC asserts not only
 18 do the two actions involve the same legal theories, issues, evidence, testimony, and witnesses, but
 19 that it will assert the same defenses in both actions.

20 Upon reviewing FDIC’s reply (doc. # 24), this court is inclined to consolidate this court’s
 21 proceedings with the cross-claims brought in bankruptcy court by Consolidated Mortgage, LLC
 22 against FDIC. Until a determination can be made as to the effectiveness of the partial reconveyance
 23 document, the plaintiff in the case presently before this court has no grounds for its claims. This
 24 document’s effectiveness is the essence of the case before this court and of the cross-claims filed by
 25 Consolidated Mortgage, LLC against FDIC in bankruptcy court.

26 If the cases are not consolidated, both courts would need to examine the same partial
 27 reconveyance document and its effectiveness, and could reach differing conclusions. This court is
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1 not inclined to promote this type of inconsistencies in its rulings.

2 **Withdrawal of the Reference**

3 18 U.S.C. § 157(d) sets forth the instances when a district court may withdraw reference from
 4 the bankruptcy court. In considering the permissiveness of doing so, a district court considers “the
 5 efficient uses of judicial resources, delay and costs to the parties, uniformity of bankruptcy
 6 administration, the prevention of forum shopping, and other related matters.” *Ormsby v. First*
 7 *American Title Co. of Nevada*, 591 F.3d 1199, 1207-08 (9th Cir. 2010) quoting *Security Farms v.*
 8 *International Brotherhood of Teamsters, Chauffers, Warehousemen & Helpers*, 124 F.3d 999,1008
 9 (9th Cir. 1997).

10 FDIC asserts that the factual allegation in both the cross-claims and the civil action before
 11 this court are nearly identical and “the interests of judicial efficiency counsel in favor of withdrawing
 12 the reference.” Further, it asserts that there is no concern for “uniformity of bankruptcy
 13 administration,” because the bankruptcy court had “already confirmed and substantially
 14 consummated a plan of reorganization” in the bankruptcy case. FDIC states, and this court agrees,
 15 that the legal issues and claims asserted in both of the cases do not arise under the bankruptcy code,
 16 but instead involve other federal law under Financial Institutions Reform, Recovery and Enforcement
 17 Act of 1989 (“FIRREA”), and other Nevada state law. Moreover, cases involving FIRREA require
 18 mandatory withdrawal of the reference. *See Lubin v. Cincinnati Ins. Co. (In re Lubin)*, 411 B.R. 801,
 19 804 (N.D. Ga. 2009).

20 FDIC, being the defendant in both actions, asserts that it “did not choose these fights,” and
 21 it only seeks to save itself substantial legal fees. Thus forum shopping is not an issue. It asks this
 22 court to consolidate and withdrawal reference of only a portion of the bankruptcy case. However,
 23 considering that the mechanic’s liens involved are already settled, that the bankruptcy court has
 24 already solidified a reorganization plan, and that the cross-claims have been bifurcated from the other
 25 proceedings on May 17, 2010, this court does not take issue with withdrawing the reference of the
 26 cross-claims. Further, both Fed. R. Civ. P. 42(a)(1) and 28 U.S.C. § 157(d) permit the withdrawal
 27 and consolidation of only “a portion of the action.”

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1 || Good cause appearing,

2 IT IS HEREBY ORDERED ADJUDGED AND DECREED that third-party defendant
3 Federal Deposit Insurance Corporation's motion for reconsideration of order dated July 29, 2010,
4 (doc. # 26) be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that Consolidated Mortgage, LLC's cross-claims in bankruptcy court against FDIC (Adversary Proceeding No. 09-01114) be consolidated with the case of *CM Capital Services, LLC v. Stewart Title of Nevada et al* (Case no. 2:10-cv-00317-JCM-LRL) before this court and reference to such claims be withdrawn.

9 DATED November 5, 2010.

Xenos C. Mahan
UNITED STATES DISTRICT JUDGE